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CITATIONS

Statute:

National Housing Act of 1949, 63 Stat. 413, 420, as amended, 73 Stat. 675, 42 U.S.C. 1460(c):

Section 110(c) 2, 3, 4, 5, 6

Miscellaneous:

S. Rep. No. 924, 86th Cong., 1st Sess. 5

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 772

HARRY A. BLACHMAN, PETITIONER

v.

ERIEVIEW CORPORATION, ET AL.

BRIEF IN OPPOSITION FOR THE HOUSING AND HOME FINANCE AGENCY, PUBLIC HOUSING ADMINISTRATION, ROBERT C. WEAVER, ADMINISTRATOR, AND THE UNITED STATES OF AMERICA

OPINIONS BELOW

The opinion of the district court (R. 6a–16a) is unreported. The opinion of the court of appeals (Pet. App. 12–14) is as yet unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 1962. The petition for a writ of certiorari was filed on January 23, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 110(c) of the Housing Act of 1949 prohibits the expenditure of federal funds for a non-residential urban renewal project in a non-residential area.

STATUTE INVOLVED

Section 110(c) of the Housing Act of 1949, 63 Stat. 413, 420, as amended, 73 Stat. 675, 42 U.S.C. 1460(c) provides in pertinent part:

* * * * * *

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided*, That, if the governing body of the local public agency determines that the redevelopment of such an area for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: * * *

* * * * * *

STATEMENT

This action was brought by petitioner, a taxpayer of the City of Cleveland, Ohio, to enjoin an allegedly illegal use of federal funds for an urban renewal project in a commercial section of that city, and to compel the City to cancel its agreement with respondent Erieview Corporation ("Erieview") for the development by the latter of certain land in the project area. The theory of the complaint (R. 3a–6a) was that the applicable federal urban renewal statute (Section 110(c) of the Housing Act of 1949, 42 U.S.C. 1460(c)) bars the expenditure of federal funds for an urban renewal project in a non-residential area. The district court dismissed the complaint on the ground

that the statute expressly permits the use of federal funds for such a project, and the court of appeals unanimously affirmed.

The amended complaint (R. 3a–6a) alleged the following facts:

On March 3, 1961, the City of Cleveland, Ohio entered into an agreement with the United States under which the United States agreed to lend the City $33,875,784, to make a capital grant of $9,898,784, and to make relocation payments of $805,000 for the development of Erieview I Project, on a designated area of about 95 acres in Cleveland (R. 4a).

On November 9, 1961, the City entered into a contract with Erieview under which the City sold to Erieview certain land in the project area, and Erieview agreed to redevelop the land according to the plans agreed on by the United States and the City (R. 4a).

The entire Erieview project area is a predominantly commercial or industrial area and is not a blighted predominantly residential area (R. 5a).

The district court rejected petitioner's contention that because the project area is not residential, the use of funds is prohibited by section 110(c). The court stated:

> * * * the statutory provisions relied on by plaintiff, contrary to his contention, do provide for financial assistance by the federal government for the redevelopment of downtown nonresidential areas such as Erieview. The plaintiff has recited only a part of a statutory provision out of the context of the whole, which

leads to his misinterpretation of the Act. [R. 15a–16a.]

The court of appeals affirmed. It held that:

> * * * The meaning of the statute is quite plain as it is written * * *. The provision in terms authorizes redevelopment of "such an area." This plainly refers to "any urban renewal area which is not predominantly residential * * * and which * * * is not to be redeveloped for predominantly residential uses. * * *" Appellant's contentions on interpretation of the statutory provisions border on the frivolous. [Pet. App. 14.]

ARGUMENT

Petitioner contends that Section 110(c) of the Housing Act of 1949 bars the expenditure of federal funds for an urban renewal project in a non-residential area. This argument, as both courts below correctly held, is directly contradicted by the plain language and the legislative history of the statute.

Section 110(c) provides:

> Financial assistance shall not be extended under this subchapter with respect to any urban renewal area which is not predominantly residential in character and which, under the urban renewal plan therefor, is not to be redeveloped for predominantly residential uses: *Provided,* That, if the governing body of the local public agency determines that the redevelopment of *such an area* for predominantly nonresidential uses is necessary for the proper development of the community, the Administrator may extend financial assistance under this subchapter for such a project: * * *. [Emphasis added.]

Petitioner contends (Pet. 7) that the proviso permits non-residential development only in "predominantly residential areas," *i.e.*, he reads the words "such an area" in the proviso as referring only to the words "not to be redeveloped for predominantly residential uses" in the prior part of the Section. As the court of appeals pointed out (Pet. App. 14), however, the reference in the proviso to "such an area" "plainly refers to 'any urban renewal area which is not predominantly residential * * * *and* which * * * is not to be redeveloped for predominantly residential uses.'" In other words, while the Section, in general, bars federal assistance for redevelopment of a non-residential area for non-residential purposes, the proviso permits "such an area" to be redeveloped for nonresidential use if the governing local body determines that such use is necessary for the proper development of the community.[1]

This interpretation of the statute is supported by its legislative history. The Senate Committee Report on the bill pointed out that Section 110(c) would "permit up to 20 percent of the future capital grant authorization to be used for areas which are not predominantly residential, and which are not to be redeveloped for predominantly residential uses, even if such areas do not include a substantial number of slum dwellings as presently required" (S. Rep. No. 924, 86th Cong., 1st Sess., p. 21). Congress thus intended, as the court below stated (Pet. App. 14), "that a limited portion (at that time 20%) of the funds only was to

[1] As noted in the opinion below (Pet. App. 14), "[n]o claim has been advanced" here that "the requisite determination has not been made by the [local] governing body".

be available for redevelopment of areas neither predominantly residential in origin nor in ultimate use."

Under petitioner's theory, the proviso is unnecessary. For since Section 110(c) bars federal assistance only if two conditions exist, *i.e.*, if the area is not residential and is not to be redeveloped residentially, it does not bar the use of federal funds to redevelop a residential area for non-residential purposes. Thus, the kind of urban renewal which, according to petitioner, the proviso is intended to authorize, is actually permitted by the statute without regard to the proviso.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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